

**Notice of Allowability**

Application No.

09/802,518

Applicant(s)

VAN NEST, GARY

Examiner

Daniel M. Sullivan

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1636

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendments filed 1 December 2005 and 3 March 2006.
2. ☒ The allowed claim(s) is/are 1-6, 8-10, 13-16, 19, 20, 23-25, 28, 40-43.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 2/28/06, 3/14/06, 7/25/06
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 04/06; 20060807
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

Daniel M Sullivan, Ph.D.  
Examiner  
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**EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Debra Glaister on 7 March 2006.

The application has been amended as follows:

**In the claims**

Claim 10 (currently amended): A method of reducing severity of a symptom of herpes simplex virus infection in an individual, comprising administering a composition comprising a polynucleotide comprising an immunostimulatory sequence (ISS) to said individual, wherein the ISS comprises the sequence 5'-~~purine, purine, C, G, pyrimidine, pyrimidine, C, G-3'~~, or 5'-~~purine, purine, C, G, pyrimidine, pyrimidine C, C-3'~~5'-C, G-3' wherein the polynucleotide comprises a phosphate backbone modification, wherein the polynucleotide is greater than 6 nucleotides and less than about 200 nucleotides in length, wherein a herpes simplex virus antigen is not administered in conjunction with administration of said composition, wherein the individual is a human and wherein said composition is administered after an exposure to herpes simplex virus and within three days after the herpes simplex virus exposure in an amount sufficient to reduce severity of a symptom of herpes simplex virus infection.

Claim 13 (currently amended): The method of claim ~~[[12]]~~10, wherein the ISS comprises a sequence selected from the group consisting of 5'-AACGTTCC-3', 5'-AACGTTTCG-3', 5'-GACGTTCC-3' and 5'-GACGTTTCG-3'.

Claim 20 (currently amended): A method of reducing recurrence of a symptom of a herpes simplex virus infection in an individual, comprising administering a composition comprising a polynucleotide comprising an immunostimulatory sequence (ISS) to said individual, wherein the ISS comprises the sequence ~~5' purine, purine, C, G, pyrimidine, pyrimidine, C, G 3' or 5' purine, purine, C, G, pyrimidine, pyrimidine, C, C 3'~~5'-C, G-3', wherein the polynucleotide comprises a phosphate backbone modification, wherein the polynucleotide is greater than 6 nucleotides and less than about 200 nucleotides in length, wherein a herpes simplex virus antigen is not administered in conjunction with administration of said composition, wherein the individual is a human and wherein said composition is administered after an exposure to herpes simplex virus and within three days after the herpes simplex virus exposure in an amount sufficient to reduce recurrence of a symptom of herpes simplex virus infection.

Claim 23 (currently amended): The method of claim ~~[[22]]~~20, wherein the ISS comprises a sequence selected from the group consisting of 5'-AACGTTCC-3', 5'-AACGTTTCG-3', 5'-GACGTTCC-3' and 5'-GACGTTTCG-3'.

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Claim 40 (new): The method of claim 10, wherein the ISS comprises the sequence 5'-purine, purine, C, G, pyrimidine, pyrimidine, C, G-3' or 5'-purine, purine, C, G, pyrimidine, pyrimidine, C, C-3'.

Claim 41 (new): The method of claim 20, wherein the ISS comprises the sequence 5'-purine, purine, C, G, pyrimidine, pyrimidine, C, G-3' or 5'-purine, purine, C, G, pyrimidine, pyrimidine, C, C-3'.

Claim 42 (new): The method of claim 10 wherein said composition is parenterally administered.

Claim 43 (new): The method of claim 20 wherein said composition is parenterally administered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel M Sullivan whose telephone number is 571-272-0779. The examiner can normally be reached on Monday through Friday 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel, Ph.D. can be reached on 571-272-0781. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

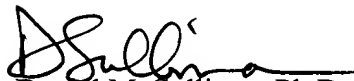
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For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

  
Daniel M. Sullivan, Ph.D.  
Primary Examiner  
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